IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

TRC.No. 15 of 1999()

TA.812/1992 of S.T.A.T.ADDL.BENCH,ERNAKULAM

PETITIONER: RESPONDENT: REVENUE:

DEPUTY COMMISSIONER OF SALES TAX (LAW)
BOARD OF REVENUE (TAXES), ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES
SRI.V.V.ASHOKAN

RESPONDENT: APPELLANT: ASSESSEE:

K.A.ABDUL RASHEED, SOVEREIGN AGENCIES,
ALWAYE.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C. No.15 of 1999

Dated this, the 18th day of June, 2007.

ORDER

H.L. DATTU, C.J.

Notice of this Tax Revision Case was served on the respondent. But he has remained absent. Therefore, he is placed exparte.

2. Admit.

3. The matter arises under the provisions of the Kerala General Sales Tax Act. The assessment year in question is 1989-90. The commodity which require interpretation of this court is whether Cumox Waste Oil is a chemical which would fall under Entry 42 of the First Schedule to the Act or is it unclassified item as held by the assessing authority.

4. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act. He purchases and effects sale of Cumox Waste Oil. In the return filed by the assessee, his stand before the assessing authority was that the sale of Cumox Waste Oil is liable to be taxed only at the point of first sale. Rejecting the contention so advanced by the assessee, the assessing authority has proceeded to complete the assessment proceedings by treating the sale of Cumox Waste Oil as an unclassified item and therefore, liable to be taxed at all points. Aggrieved by the conclusion so reached by the assessing authority, the assessee was before the first appellate authority. After hearing the appellant, the first appellate authority has rejected the appeal. In that order, it is stated as under:

> "It is an undisputable fact that common waste oil is a petroleum product. But the waste oil sold by the appellant is waste oil received after purifying the oil. Hence waste commox oil cannot be considered as an item scheduled in the KGST Act. Therefore, levy of tax at general rate is upheld."

5. Aggrieved by the aforesaid order of the first appellate authority, the assessee had carried the matter in appeal before the Kerala Sales Tax Appellate Tribunal. The Tribunal, merely on the basis that the purchase effected by the assessee was from the Hindustan Organic Chemicals and had sold it as a chemical to its purchasers, has arrived at the conclusion that the Cumox Waste Oil is a chemical and therefore would fall under Entry 42 of First Schedule of the Kerala General Sales Tax Act and therefore liable to be taxed only at the point of first sale.

6. The Revenue, being aggrieved by the aforesaid decision of the Tribunal is before us in this Tax Revision Case.

7. The Revenue has raised the following questions of law for our consideration and decision:

> "1. Is the Tribunal correct in law in its conclusion that waste oil dealt with by the assessee is a chemical covered by entry 42 of the First Schedule to the KGST Act?
>
> 2. Is not the entry interpretation given by the Tribunal erroneous in law and against the judicial pronouncement on the issues?"

8. The Entry 42 for the assessment year in question reads as under:

Sl. No.	Description of goods	Point of levy	Rate of tax
xx	xx	xx	xx
42.	Chemicals not elsewhere specified in this Schedule	At the point of first sale in the State by a dealer who is liable to tax under Section 5.	8%
xx	xx	xx	xx

9. The admitted facts are:

The assessee is a dealer in Cumox Waste Oil. He purchases the said oil from the Hindustan Organic Chemicals and sells it to its purchasers. However, in the sales bills raised, it is stated by the dealer that it is a chemical.

10. The question put forward for our consideration is whether Cumox Waste Oil is a chemical or not. The relevant entry (Entry 42) speaks of chemicals not elsewhere specified in the First Schedule. Now the first question that requires to be answered is, what is a chemical? The word 'chemical' means a substance obtained by or used in chemical process. This indicates that any commodity which is used for obtaining a chemical reaction or a commodity obtained by the process of chemical reaction will have to be treated as a chemical. In the alternative, the word 'chemical' means a substance used for producing a chemical effect or produced by a chemical process. The word 'chemical' has to be understood in the sense in which it is understood in common parlance in the commercial world. The Cumox Waste

Oil, that is purchased and sold by the dealer is only used as a lubricating oil and has no other chemical properties. Lubricating oils during service, gets contaminated with abrasive materials like metal particles, sediments, carbon particles from combustion in auto engines, dust particles from atmosphere as also water and fuel. The waste oil so purchased can be used only after the contaminates are drained as lubricating oil. The waste oil, therefore, will not have any chemical properties to fall under the wide definition of chemicals that finds a place under Entry 42 of First Schedule to the Act. Therefore, in our opinion, merely because the dealer has purchased the Waste Oil from Hindustan Organic Chemicals and effected sales and raised the sales bills as a chemical, does not make the product a chemical which would fall under Entry 42 of the First Schedule of the Kerala General Sales Tax Act.

11. Therefore, the reasoning of the Tribunal cannot be accepted by us. Accordingly, the Tax Revision Case requires to be allowed and the questions of law raised by the Revenue require to be answered in favour of the Revenue and against the assessee.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

DK.

H. L. DATTU, C.J. &
K.T. SANKARAN, J.

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T.R.C. No. 15 OF 1999

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Dated this the 18th June, 2007

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